

REMARKS

Entry of this Amendment is respectfully requested. Responsive to the outstanding Office Action, claims 1, 48, 50, 52, 54 and 56 have been amended to recite composition concentrates as supported by the disclosure provided at page 25, lines 16-20 and page 27, lines 13-22 of the instant specification. No new matter has been added.

Additionally, the alleged new matter earlier presented in claim 1 reciting “free of thiazolinone and free of a strong chelating agent” has been deleted, thereby avoiding the 35 U.S.C. 112, first paragraph rejection recited at page 2 of the outstanding Office Action. Claims 3, 5, 47, 49, 51, 53 and 55 are hereby canceled., thereby avoiding the outstanding rejections of those claims.

Claims 1, 48, 50, 52, 54 and 56 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over co-pending U.S. application Serial No. 10/325,016. Responsive to this rejection, a Terminal Disclaimer is attached hereto, thereby overcoming this rejection.

The instant claims stand rejected under 35 USC 102(b) as allegedly anticipated by Kappock. This rejection is believed to be untenable in view of the fact that the instant claims recite composition concentrates. The concentrates are diluted in a working fluid at a specified dilution rate of between about 1:10 and about 1:100. Kappock does not disclose or suggest the preparation of any such composition concentrates, but rather working fluids, such as paints. Illustratively, it is noted that the composition recited at column 1, lines 35-49 of Kappock requires the presence of a base medium such as a polymer latex. As another illustration, Example 1 of Kappock recites a paint wherein sodium pyrithione is added to the “mill base” and zinc oxide is added to the “pigment grind” in the process of making the paint.

Kappock does not disclose or suggest any antimicrobial concentrate, but rather compositions containing a base medium, such as a polymer latex. Thus, the Kappock compositions are paints, shampoos, and the like, not antimicrobial concentrates. Further, Kappock does not disclose any range of dilutions for antimicrobial concentrates since it neither discloses nor suggests the underlying concentrates.

Claim 44 is limited to silver as the metal. Kappock neither discloses nor suggests the use of silver in patentee’s composition.

Claims 33, 34 and 43-58 stand rejected under 35 USC 102(b) as allegedly anticipated by Wiese. However, Wiese does not disclose or suggest any antimicrobial concentrates, much less the instantly claimed dilution range. Claim 44 has been limited to silver as the metal. Wiese neither discloses nor suggests the use of silver in patentee's composition.

Claims 1-3, 5, 8, 9-11, 45-47 and 55 are rejected under 35 U.S.C. 102(b) over Nagata. discloses aqueous and crown ether antimicrobial compositions. It does not disclose or suggest concentrates in the context of the instantly claimed range of dilution ratios. Accordingly, this rejection is untenable and should be withdrawn. Claim 44 has been limited to silver as the metal. Dixon neither discloses nor suggests the use of silver in patentee's composition.

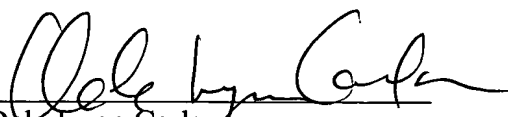
By this Amendment, claims 1, 48, 50, 52, 54 and 56 have been amended. Claims 3, 5, 47, 49, 51, 53 and 55 have been cancelled. Accordingly, claims 1, 2, 8-11, 33, 34, 43-46, 48, 50, 52, 54 and 56-58, are presented for further examination. No new matter has been added. By this Amendment, all pending claims are believed to be in condition for allowance.

Accordingly, Applicant submits that none of the references, alone or in combination, anticipate or make obvious the invention as presently claimed and that the application is now in condition for allowance. Therefore, Applicant respectfully requests reconsideration of the amended claims and an early receipt of a Notice of Allowance thereof.

Enclosed herewith is a Request for Continuing Examination document. If the Examiner has any questions or believes that a discussion with Applicant's attorney would expedite prosecution, the Examiner is invited and encouraged to contact the undersigned at the telephone number below.

Please apply any credits or charge any deficiencies to our Deposit Account No. 23-1665.

Respectfully submitted,
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